

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

SAUER CONSTRUCTION, LLC)
a Florida Limited Liability Company,)
Plaintiff,)

2:24-cv-05277-DCN
Case No. _____

R AND R MASONRY, INC., a South)
Carolina Corporation,)

COMPLAINT

Defendants.)
)
)
)
_____)

COMPLAINT

Plaintiff, Sauer Construction, LLC (“Sauer”) brings this action against R and R Masonry, Inc. (“R&R”) and alleges as follows:

Jurisdiction and Venue

1. This is an action for promissory estoppel against R&R relating to a project Sauer bid and was subsequently awarded by the Department of Navy (“Owner” or “NAVFAC”) located at Flight Line Support Facility at Naval Weapons Station, Joint Base Charleston, South Carolina.

2. The amount in controversy exceeds \$75,000.00, exclusive of costs, interest and attorneys fees.

3. Plaintiff Sauer is a Florida limited liability company, with its principal place of business in Jacksonville, Florida, and is authorized to transact business in South Carolina.

4. Defendant R and R Masonry, Inc. is a South Carolina corporation with its principal place of business in Charleston, South Carolina and is authorized to transact business in South Carolina.

5. Venue is proper in this Court as the Project that forms the basis of the dispute is located at Naval Weapons Station, Joint Base Charleston, South Carolina.

General Allegations

6. On or about June 20, 2022, R&R submitted a proposal to Sauer for the Flight Line Support Facility project at Naval Weapons Station, Joint Base Charleston, South Carolina (the “Project”). A copy of R&R’s proposal is attached hereto as **Exhibit A** and hereinafter referred to as (the “June 2022 Proposal”).

7. The June 2022 Proposal’s total price of \$347,000 was separated into four line items: 1.) Labor & materials to lay 8” CMU at interior warehouse walls, install vertical reinforcement, and pour reinforced cells/bond beams with grout: \$70,000.00. 2.) Labor & materials to lay 8” CMU at exterior warehouse walls, install vertical reinforcement, and pour reinforced cells/piers with grout: \$107,000.00. 3.) Labor & materials to install rigid insulation, ties, weeps, flashing, and mortar net, to lay brick veneer/cast stone at exterior walls of administrative building: \$135,000.00. 4.) Labor & materials to lay 8” CMU, brick veneer, and cast stone at brick columns and at dumpster enclosure: \$35,000.00.

8. R&R’s email to Sauer transmitting the proposal noted “[m]asonry bid includes all labor and materials, excluding exterior waterproofing.”

9. Sauer, in reliance on R&R’s June 2022 Proposal, thereafter incorporated R&R’s \$347,000.00 price into its prime bid for the Project, which it was ultimately awarded as the low bidder.

10. Post-award, the final design eliminated the exterior wall component and after the masonry scope was finalized, R&R submitted an updated proposal to Sauer on June 19, 2023 for \$310,000.00, whereby it eliminated the second line item pertaining to the exterior warehouse wall.

A copy of R&R's proposal is attached hereto as **Exhibit B** and hereinafter referred to as (the "June 2023 Proposal").

11. Shortly thereafter, on June 26, 2023, Sauer notified R&R of Sauer's intent to award R&R the brick and block masonry scope, to which R&R responded, "Got it". See **Exhibit C**.

12. In the following months, R&R proceeded as if it intended to honor its commitment.

13. On July 28, 2023, R&R completed its required Subcontractor Pre-Qualification Application. See **Exhibit D**.

14. On August 13, 2023, R&R returned an executed copy of Sauer's Subcontract Schedule F – Representations, Certifications, and Acknowledgements. See **Exhibit E**.

15. However, on February 1, 2024, Sauer reached out to R&R to finalize its subcontract agreement and discuss submittals and project schedules. In response, on February 7, 2024, R&R submitted a "revised proposal" increasing its price to \$427,000.00. R&R's proposal is attached hereto as **Exhibit F** and hereinafter referred to as (the "February 2024 Proposal").

16. Although Sauer was under no obligation to do so as it had received lower pricing from R&R previously on which it relied, on February 9, 2024, Sauer returned a marked up copy of R&R's revised proposal after deducting \$107,000.00 in relation to the exterior warehouse wall which had been de-scoped by the Owner, for a total price of \$320,000.00. See **Exhibit G**.

17. On February 14, 2024, Sauer followed up its prior February 9 correspondence to R&R asking R&R to provide its subcontract, bonds, and submittals as soon as possible to keep things on track. Later that day, R&R responded, "We will be getting those to you ASAP." See **Exhibit H**.

18. To date, this is the last Sauer has heard from R&R regarding the Project despite multiple attempts to contact R&R over both email and phone.

19. Due to R&R's failure to honor its commitment on which Sauer relied in submitting its successful prime bid, Sauer has been forced to engage other masonry subcontractors at a significant premium to R&R's proposal.

COUNT I –Promissory Estoppel

20. Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 19 above as if set forth fully herein.

21. R&R submitted an unambiguous proposal to perform the masonry and CMU block work for Sauer's prime bid as it was itemized, specifically referenced the Project, and included its scope of work and any pertinent exclusions.

22. Sauer reasonably relied on R&R's June 2022 Proposal.

23. Sauer's reliance was expected and foreseeable by R&R, who continued to work with Sauer post-award and at no time indicated they did not intend to honor their proposal.

24. Sauer has sustained damages as a result of its reliance on R&R's proposal, which damages are continuing to occur.

25. Sauer's cost to secure a substitute subcontractor to perform the work R&R promised to perform is \$585,283.00 to date. The difference between these costs and R&R's adjusted February 2024 Proposal is \$265,283.00.

WHEREFORE, Sauer requests this Court to enter judgment against R&R for its damages as set forth herein, plus such additional sums that become due until the date of judgment, interest, and costs, and any such further relief that this Court deems just and proper.

SIGNATURE TO FOLLOW ON NEXT PAGE.

Respectfully Submitted,

s/Bryan P. Kelley

Bryan P. Kelley (Fed. ID #10493)

Katherine S. Elmore (Fed. ID # 13291)

Elmore Goldsmith Kelley & deHoll, P.A.

19 Blair Street (29607)

Post Office Box 1887

Greenville, South Carolina 29602

Telephone: (864) 255-9500

E-mail: bkelley@elmoregoldsmith.com

E-mail: kelmor@elmoregoldsmith.com

Counsel for Sauer Construction, LLC

September 24, 2024

Greenville, South Carolina